

## HOUSE BILL NO. 374

INTRODUCED BY HARRIS, HAMILTON, BECKER, DICKENSON, WISEMAN, JACOBSON, VILLA,  
COHENOUR, CAMPBELL

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE INCARCERATION AND FINE THAT MAY BE  
IMPOSED ON A PERSON FOR A FIRST THROUGH THIRD CONVICTION OF DRIVING WHILE UNDER THE  
INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION IF ONE OR MORE PASSENGERS  
UNDER 16 YEARS OF AGE WERE IN THE VEHICLE AT THE TIME OF THE OFFENSE; AND AMENDING  
SECTIONS 61-8-714; AND 61-8-722, AND 61-8-731, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-8-714, MCA, is amended to read:

**"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.**

(1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24  
consecutive hours or more than 6 months and ~~shall be punished by a fine of not less than \$300 or more than~~  
\$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the  
offense, the person shall for each of those passengers be punished by imprisonment for not less than 48  
consecutive hours or more than 12 months and by a fine of not less than \$600 or more than \$2,000. The initial  
24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest.  
The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the  
imprisonment sentence will pose a risk to the person's physical or mental well-being. Except for the initial 24  
hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended  
for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment,  
education, or treatment by the person.

(2) On a second conviction, the person shall be punished by a fine of not less than \$600 or more than  
\$1,000 and by imprisonment for not less than 7 days or more than 6 months, except that if one or more  
passengers under 16 years of age were in the vehicle at the time of the offense, the person shall for each of  
those passengers be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for  
not less than 14 days or more than 12 months. At least 48 hours of the imprisonment term must be served and

1 ~~served~~ consecutively ~~in the county jail~~ and may not be served under home arrest. The imposition or execution  
2 of the first 5 days of the imprisonment sentence may not be suspended. Except for the initial 5 days of the  
3 imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period  
4 of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

5 (3) On the third conviction, the person shall be punished by imprisonment for a term of not less than  
6 30 days or more than 1 year and by a fine of not less than \$1,000 or more than \$5,000, except that if one or  
7 more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall for each  
8 of those passengers be punished by imprisonment for a term of not less than 60 days or more than 2 years 12  
9 MONTHS and by a fine of not less than \$2,000 or more than \$10,000. At least 48 hours of the imprisonment term  
10 must be served and served consecutively ~~in the county jail~~ and may not be served under home arrest. The  
11 imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder  
12 of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of  
13 a chemical dependency treatment program by the person."  
14

15 **Section 2.** Section 61-8-722, MCA, is amended to read:

16 **"61-8-722. Penalty for driving with excessive alcohol concentration -- first through third offense.**

17 (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days  
18 and ~~shall be punished~~ by a fine of not less than \$300 or more than \$1,000, except that if one or more  
19 passengers under 16 years of age were in the vehicle at the time of the offense, the person shall for each of  
20 those passengers be punished by imprisonment for not more than 20 days and by a fine of not less than \$600  
21 or more than \$2,000.

22 (2) On a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment  
23 for not less than 5 days, to be served in the county jail and not on home arrest, or more than 30 days and by a  
24 fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age  
25 were in the vehicle at the time of the offense, the person shall for each of those passengers be punished by  
26 imprisonment for not less than 10 days, which may not be served on home arrest, or more than 60 days and  
27 by a fine of not less than \$1,200 or more than \$2,000. The imposition or execution of the first 5 days of the  
28 imprisonment sentence may not be suspended.

29 (3) On a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for  
30 not less than 10 days, to be served in the county jail and not on home arrest, or more than 6 months and by a

1 fine of not less than \$1,000 or more than \$5,000, except that if one or more passengers under 16 years of age  
2 were in the vehicle at the time of the offense, the person shall for each of those passengers be punished by  
3 imprisonment for not less than 20 days, which may not be served on home arrest, or more than 12 months and  
4 by a fine of not less than \$2,000 or more than \$10,000. The imposition or execution of the first 10 days of the  
5 imprisonment sentence may not be suspended."

6  
7 ~~Section 3. Section 61-8-731, MCA, is amended to read:~~

8 ~~"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol~~  
9 ~~concentration -- penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under~~  
10 ~~61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be~~  
11 ~~punished by:~~

12 ~~—— (a) sentencing the person to the department of corrections for placement in an appropriate correctional~~  
13 ~~facility or program for a term of 13 months. The court shall order that if the person successfully completes a~~  
14 ~~residential alcohol treatment program operated or approved by the department of corrections, the remainder of~~  
15 ~~the 13-month sentence must be served on probation, except as provided in subsection (1)(b) when one or more~~  
16 ~~passengers under 16 years of age were in the vehicle at the time of the offense. The imposition or execution~~  
17 ~~of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.~~

18 ~~—— (b) sentencing the person to either the department of corrections or the Montana state prison or~~  
19 ~~Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run~~  
20 ~~consecutively to the term imposed under subsection (1)(a), except that if one or more passengers under 16~~  
21 ~~years of age were in the vehicle at the time of the offense, the person shall for each of those passengers be~~  
22 ~~sentenced to either the department of corrections or the Montana state prison or Montana women's prison for~~  
23 ~~a term of 5 years, 3 years and 11 months of which must be suspended, to run consecutively to each other and~~  
24 ~~to the term imposed under subsection (1)(a), and after the person completes the 13-month term under~~  
25 ~~subsection (1)(a) or successfully completes the program before that term expires, the person must serve 13~~  
26 ~~months of each 5-year sentence; and~~

27 ~~—— (c) a fine in an amount of not less than \$1,000 or more than \$10,000, except that if one or more~~  
28 ~~passengers under 16 years of age were in the vehicle at the time of the offense, then for each of those~~  
29 ~~passengers a fine in an amount of not less than \$2,000 or more than \$20,000.~~

30 ~~—— (2) The department of corrections may place an offender sentenced under subsection (1)(a) in a~~

1 ~~residential alcohol treatment program operated or approved by the department of corrections or in a state prison.~~

2 ~~—— (3) The court shall, as a condition of probation, order:~~

3 ~~—— (a) that the person abide by the standard conditions of probation promulgated by the department of~~  
4 ~~corrections;~~

5 ~~—— (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment~~  
6 ~~under this section;~~

7 ~~—— (c) that the person may not frequent an establishment where alcoholic beverages are served;~~

8 ~~—— (d) that the person may not consume alcoholic beverages;~~

9 ~~—— (e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;~~

10 ~~—— (f) that the person enter in and remain in an aftercare treatment program for the entirety of the~~  
11 ~~probationary period;~~

12 ~~—— (g) that the person submit to random or routine drug and alcohol testing; and~~

13 ~~—— (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition~~  
14 ~~interlock system.~~

15 ~~—— (4) The sentencing judge may impose upon the defendant any other reasonable restrictions or~~  
16 ~~conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited~~  
17 ~~to:~~

18 ~~—— (a) payment of a fine as provided in 46-18-231;~~

19 ~~—— (b) payment of costs as provided in 46-18-232 and 46-18-233;~~

20 ~~—— (c) payment of costs of court-appointed counsel as provided in 46-8-113;~~

21 ~~—— (d) community service;~~

22 ~~—— (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the~~  
23 ~~protection of society; or~~

24 ~~—— (f) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(e).~~

25 ~~—— (5) Following initial placement of a defendant in a treatment facility under subsection (2), the department~~  
26 ~~of corrections may, at its discretion, place the offender in another facility or program.~~

27 ~~—— (6) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and~~  
28 ~~46-23-1031 apply to persons sentenced under this section."~~

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